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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/944,435	10/06/1997	LAURENCE A. LAVENDEL	36-P143	1436

5514 7590 06/13/2002

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EXAMINER

LUU, SY D

ART UNIT	PAPER NUMBER
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2174

DATE MAILED: 06/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

08/944,435

Applicant(s)

LAVENDEL ET AL.

Examiner

Sy D Luu

Art Unit

2174

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 9 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☐ The proposed amendment(s) will not be entered because:
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 74,75,77-82,84-89,91-96,98-103 and 105-108.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
 10. ☒ Other: Notice of References cited (PTO-892)

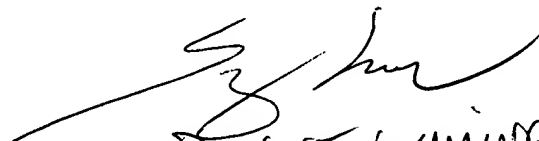
Continuation of 5. does NOT place the application in condition for allowance because: The Response and Declarations filed 5/23/2002 have been considered but are not persuasive.

Applicants remark/declare the following: (a) evidence of an actual date is needed to establish an effective date of a software product; and (b) the inventors had conceived and reduced to practice in the United States the claimed subject matter prior to August 1997, which is the date of availability of the prior art.

The Examiner disagrees for the following reasons.

Per (a), by stating that the product was "introduced" on 8/11/1997 (first line on page 1 of the press release), the product was implied to be either on sale or in use (product demonstration e.g.) by the same date. Furthermore, the product was indicated to be in distribution/published on 8/25/1997 and 8/29/1997 respectively (see MultiMedia Week and Copyright Search of "Adobe PhotoDeluxe 2.0 for Windows"--Computer program & CD-ROM).

Per (b), the date of the software program code as shown on page 2 of Appendix A is 9/12/1997, which is NOT prior to the prior art date of 8/25/1997. Applicants' statements are insufficient to substantiate that they are in possession of the computer code before August 1997, as claimed. Moreover, substantial further consideration would be necessary in order to determine that the code functioned as claimed in the declarations.


PATENT EXAMINER
June 10, 2002